INTERSTATE ADVISORY COMMITTEE
on the
SUSQUEHANNA RIVER BASIN
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MYTHS AND FACTS

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THE MYTH:

That the Commission can apportion the waters of the basin without regard to private rights and without a judicial determination of rights.

THE FACT:

Section 3.8 (c) of the compact as printed, page 15, says specifically that "no allocation of waters" by the commission "shall constitute a prior appropriation or confer any superiority of right in respect to the use of those waters, nor shall any such action be deemed to constitute an apportionment of the waters of the basin among the parties hereto."

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THE MYTH:

That the commission can override state law and bring criminal proceedings in its own name for violation of the compact.

THE FACT:

The reference is to Section 15.17, page 53, which says that violations shall be punishable as provided in the statutes of the signatory parties in which the violation is committed.

Pennsylvania is a signatory party. What do Pennsylvania statutes say? That violations of state statutes shall be by the office of the district attorney in the county where the violation is alleged to have occurred.

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THE MYTH:

That no other agency has the authority to bring civil charges in its own name; that this is a scheme to circumvent the office of the Attorney General.

THE FACT:

In Section 15.1, page 44, it is clearly stated that the commission may sue and be sued in any court of competent jurisdiction. This is as it should be. The commission, however, is not only an agency of Pennsylvania, but of New York, Maryland, and the Federal Government as well. Thus, in administering interstate water matters it may one day have to take action against another agency of Pennsylvania. The Attorney General's office serves these other Pennsylvania agencies. Under such circumstances, should the Pennsylvania Attorney General represent both agencies?

Canon of Ethics No. 6 of the American Bar Association says one attorney can't serve both parties to a law suit. If you, the reader of this, were in a suit arising out of, say, an automobile accident, would you want your lawyer to represent the other fellow, too?

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THE MYTH:

The commission would be doing wrong somehow if it should only utilize the services of state and federal agencies in matters consistent with the compact.

THE FACT:

The reference is to Section 3.2, page 11. The commission would be doing wrong if it did seek to utilize other agencies for activities outside the scope of the compact. What business of the commission's would such activities be? This limitation should be in the compact.

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THE MYTH:

That the activities of the commission would not be carried out by the unit of government closest to the people.

THE FACT:

It is commonly accepted as proper that actions of a governmental nature should be carried out by the lowest level of government best capable of doing what needs to be done. The Interstate-federal compact for the Susquehanna basin is intended to cope with water matters that are interstate in nature or that in the aggregate have an interstate effect. Therefore, the commission is the unit of government closest to the people that is best capable of doing this particular kind of job.

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THE MYTH:

That courts could not rule on determinations made by the commission but only on whether a determination had, in fact, been reached.

THE FACT:

Section 3.10-6, page 17, says, "Any determination of the commission. . .shall be subject to judicial review in any court of competent jurisdiction." Here, and also later in the same section the language is clear: The determination itself is subject to judicial review.

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THE MYTH:

That the hundred years duration of the compact is too long.

THE FACT:

That's a strange argument. The 99-year lease in real estate matters is a common practice. But there is a more compelling reason why the compact should be of comparatively long duration. If the member parties should at any time instruct the commission to construct some kind of water project for them, it probably would have to do so with money from a bond issue. Bond issues commonly are retired over a period of fifty years, occasionally over a longer term. The commission could not issue bonds for a term of years longer than the term of the compact itself.

The term of years in the Susquehanna compact is the same as in the Delaware compact; why wasn't the question raised when the Delaware was passed in 1961? And ORSANCO, the Ohio River Valley Water Sanitation Compact goes on to perpetuity, without any provision for a member to withdraw at any time; why wasn't the question raised when Pennsylvania joined ORSANCO? If 100 years is all right for the Delaware compact, and infinity for ORSANCO, why isn't 100 years all right for the Susquehanna?

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THE MYTH:

That it isn't right for the commission to pay money in lieu of taxes on any property it might acquire and then review the amount of the payment ten years later.

THE FACT:

The reference is to Section 15.3, page 45. This section says that if the commission holds title to any property, it shall pay to the taxing jurisdiction money in lieu of taxes for ten years in the same amount that had been paid by the previous owners. Then it would be mandatory for the commission to review the amount of the payments, and from time to time thereafter, to see whether the fair thing to do would be to pay either less or more than it had been paying up to that time. Whether the later payments should be more or less would take into account hardships incurred or benefits received by the taxing jurisdiction attributable to the existence of the commission property. How can this be truthfully called unfair or improper?

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THE MYTH:

A federal official has suggested that if a Potomac compact is enacted, some land on both sides of that river should be included; therefore, it will be federal policy to demand that farmlands on both sides of the Susquehanna and all its tributaries be turned over to the federal government to administer.

THE FACT:

How fallacious can one get? The Potomac and Susquehanna are completely different rivers. The lower Potomac flows past Washington, and some officials do seem to want it impressively parklike for the enjoyment of the millions of visitors to the national capitol area. Parts of the lower Potomac have historic interest.

since George Washington surveyed the route later taken by the old Chesapeake and Ohio Canal, a portion of which, near historic Harpers Ferry, already is a part of the National Parks system. In the sixty miles between Harrisburg and the head of Chesapeake Bay, most of the Susquehanna has been pre-empted for the production of electric power by the construction of several dams and plants. The hills plunge down to the water's edge. There aren't even roads along the shores. Even if federal people wanted to create parklike conditions along the lower river it would be totally impractical. The rest of the myth - taking farmlands out of production along both banks of all tributaries - is so far-fetched and fantastic as not to be worth a reply.

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THE MYTH:

The compact isn't federal law and the federal people wouldn't need to abide by the commission's decisions.

THE FACT:

The last paragraph of the Preamble, page 3, says the three states and "the United States of America hereby solemnly covenant and agree with each other upon the enactment of concurrent legislation by the Congress of the United States and the respective state legislatures, to the Susquehanna River Basin Compact."

Further language emphasizing the full partnership status of the federal government is found in Section 1.4, page 7, Section 12.1, page 32, and all the other places where specific references are made to "the signatory parties."

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THE MYTH:

That because the compact supersedes state law, and is harder to amend than state law, somehow both of these situations are bad.

THE FACT:

Whether these situations are bad should be judged on the basis of why they appear in the compact.

The compact not only supersedes state law in certain important aspects of water resources conservation and development: it is state law in each of the three basin states, just as it also is federal law, and it is intentionally so in order that all four of the parties may act jointly and in concert on water resource matters beneficial to all.

The compact is harder to amend than laws passed by only one governmental jurisdiction only because it takes identical amendments by all four before their action can become effective. If any one of the four members found good cause for a change in the language of the compact, it could be changed in any one legislative year - just as the law of a single state can now be amended: the only prerogative is that the proposed amendment would have to be provably good and necessary.

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THE MYTH:

That the commission might supersede soil and water conservation districts.

THE FACT:

That is nonsense, and the author of the untruth knows it is untrue, that it is impossible for any such eventuality to occur.

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THE MYTH:

That it is wrong for the commission to have or exercise any police powers.

THE FACT:

There is nothing new or unusual about the inclusion of police powers in an administrative code or law; it is in the laws of the federal government, the states, the counties, the cities, the boroughs, and the townships. The compact is an interstate-federal administrative law.

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THE MYTH:

That implementing compact provisions relating to flood plains would cause land to be flooded.

THE FACT:

The truth is the exact opposite. The reference is to the protection against floods that would be provided in Article 6, pages 23-25, with the consent of the affected state.

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THE MYTH:

That the commission can force ordinances down the throats of local government bodies.

THE FACT:

The reference is to the provisions of Article 9, page 28, which seeks to focus attention on scenic and historic areas in the basin. Section 9.4 says the commission may recommend ordinances, which may or may not be accepted by local government officials. The commission would hope any such recommendation would be approved, and the chances seem at least fifty-fifty that local officials would welcome help in the drafting of such ordinances.

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THE MYTH:

That because authority to do something is in the compact, such authority will automatically be used.

THE FACT:

Township, borough, county, and state codes include a wide variety of powers that probably will never be used, but the power is there. As one of many examples, Section 702-1 of the Second Class Township law is written so that, if they wanted to, the supervisors of a rural township could install lights along all their county roads, just like those along city streets. Will Boards of Supervisors do this? It is hardly likely, but it seems a sure bet the township people will try to see to it that the General Assembly leaves the power in the law.

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THE MYTH:

That in some unexplained way the compact will impair or endanger a landowner's water rights.

THE FACT:

There is nothing in the compact to prevent any of the three basin states from enacting any kind of water legislation it wants to. In two kinds of situations the Susquehanna commission could take charge of water and supersede water law. One is if we have a severe and prolonged drought; in such case the commission could declare an emergency and ration the available water fairly among all users. The other is in case of a tremendous natural or manmade catastrophe that might strike suddenly and make normal supplies of water unusable, even poisonous. Both of these are protective powers. See Section 11.4, page 30.

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THE MYTH:

That landowners would somehow be barred from taking part in the planning and development of water resources of the basin.

THE FACT:

The comprehensive plan and the action program called for in the compact will not be pulled out of thin air by some trick of magic. The plan is the cumulative total of water resource projects that already exist, coupled with what is being or will be planned for times to come. And the initial planning will be done by the same people who do it now. The main difference is that the commission, an impartial connselor, will help to assure that what is done with water over here doesn't harm somebody over there. Nor will the commission itself carry out the action program of development that evolves from the planning. That, too, will be done by the same people who do those things now.

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THE MYTH:

That there is something wrong about having the federal government as a member and as a partner in the compact and commission.

THE FACT:

Isn't it logical to assume that we will get more understanding of our needs in the Susquehanna basin if a representative of the President sits as a member of the commission and takes part in all discussions? The Susquehanna has been called the largest underdeveloped river basin in eastern America. Compacts have been described by the U. S. Supreme Court as the most effective mechanism yet invented for pulling together and harmonizing the work of agencies of the states and the federal government. We should therefore use this tool to the fullest, to try to see to it that we don't get the haphazard, hit-or-miss kind of water development that has caused so much trouble in other basins. No, the federal government should have membership, so the President's man will know beyond doubt what the states want and what will best satisfy the water needs of their people. It takes years to get big water projects off dead center and built and in operation. That time can be shortened by the presence of a federal member. And if some crackpot draams up a bad project, the presence of the federal member can help assure that it won't be built. The states will be dealing with Uncle Sam right in the same room, at the same table - not at long distance in Washington.

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THE MYTH:

That it is bad for the commission to have any powers; it should have recommendatory authority only.

THE FACT:

A commission that had coordinating functions alone would not be as effective in protecting Pennsylvania's rights and wishes as a commission that carried background authority. Where would a coordinating commission be in respect to our northern tier counties, for example, if New York wanted to install some sort of water project that would be detrimental to Pennsylvania? All the Commonwealth could do would be to say "please," and if New York didn't choose to "please" Pennsylvania would face a long, hard, costly fight in the federal courts system. With the kind of commission created by the Susquehanna compact, it could say "don't," and make it stick. Of course, that works both ways, as it should. Pennsylvania would also have to behave itself.

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THE MYTH:

That it was wrong for the compact to be drafted as it was by the Interstate Advisory Committee; it should have been done in a fish bowl, in front of everybody.

THE FACT:

How many bills to be offered to the General Assembly or the Congress are written fish bowl fashion? Mighty few, if any. Somebody has to start things going, and it is common for individuals or small groups to write the first draft, and then circulate it for comment and modification.

In this case, the first writing was done by an official agency of the three Susquehanna states, but as soon as their drafting effort was finished ten thousand

copies were printed and widely distributed for comment. As a result of the comment, which came out of meetings with agencies, legislative committees, associations, and individuals, the Interstate Advisory Committee made 47 separate changes to improve the compact and put it in the language that has already received the approval of the legislatures of New York and Maryland.

The technique used to draft this compact has been used frequently; there was nothing new or secretive about the system. In fact, the individual who has spread this myth undoubtedly has used a similar technique in writing bills himself.

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THE MYTH:

That because Pennsylvania has more basin geography than the other states, it should have more votes in the commission than the other states.

THE FACT:

If this was only an interstate compact, the allegation might have some basis for argument. However, with the federal government as a working member, it is totally unrealistic, for it is inconceivable that the federal government would allow any single state to outvote it in the commission's day to day activities.

The one-man, one-vote rule of the Supreme Court decision doesn't apply. Here we are talking about one-sovereign-jurisdiction, one-vote; and under the Constitution one state cannot be more sovereign than another state. If the one man, one vote rule should apply, then, since New York has more people than Pennsylvania, why doesn't it have more governors?

If geography is to be the ruling factor on votes, how could we then deny the federal government as many votes as all the states combined, since all of the basin is within and is a part of the United States?

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In a few instances our critic has put forward sound, constructive thoughts, and in order that he cannot yell "foul" we are glad to itemize them:

1. He suggested that we drop out six unnecessary words in Section 3.5-2 and we did so.

2. He suggested that we make uniform our many references to public hearings, and we did so.

3. He, in company with other leaders of farm people, suggested that we should name state condemnation law ahead of federal condemnation law in Section 15.14 (b) and we did so.

He was present at a meeting with farm leaders when another person there suggested we should prominently assert that the commission itself would build water projects only when they were absolutely essential and there simply wasn't anybody else who could or would build them, and we did so.